

1 PHILLIP A. TALBERT
2 United States Attorney
3 CHRISTINA McCALL
4 Assistant United States Attorney
5 501 I Street, Suite 10-100
6 Sacramento, CA 95814
7 Telephone: (916) 554-2700
8 Facsimile: (916) 554-2900
9

10
11 Attorneys for Plaintiff
12 United States of America
13
14

15 IN THE UNITED STATES DISTRICT COURT
16
17 EASTERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,

19 CASE NO. 2:22-CR-0197 JAM

20 Plaintiff,

21 STIPULATION AND PROTECTIVE ORDER
22 REGARDING DISCOVERY

23 v.

24 TERRY FRANCIS LE CLAIR,

25 Defendant.

26
27
28 STIPULATION

29 Pursuant to 18 U.S.C. §§ 3509(d) and 3771(a)(8) and Federal Rule of Criminal Procedure 16(d),
30 the undersigned parties hereby stipulate and agree, and respectfully request that the Court order that:

31 1. Much of the discovery in this case contains personal, identifying information regarding
32 third parties (adults and minors), including but not limited to their names, physical descriptions,
33 telephone numbers and/or residential addresses.

34 2. This Order pertains to all discovery provided to or made available to defense counsel that
35 contains the name of, or other personally identifying information about, an identified victim or minor
36 witness (hereafter, collectively known as “protected discovery”). Such protected discovery shall be
37 identified as protected by the government when it is produced to the defense, in a cover letter, or by a
38 specially-designated Bates range, or through an e-mail message.

39 3. Defense counsel shall not disclose any of the protected discovery or its contents directly

1 or indirectly to any person other than their respective defendant/ client, potential witnesses that they are
2 interviewing or preparing for trial, counsel for those witnesses, or anyone employed by defense counsel
3 (such as attorneys, paralegals, secretaries, experts, investigators, and law clerks) in connection with the
4 representation of the defendant in this criminal case.

5 4. The defendant may view the protected discovery in the presence of defense counsel
6 and/or a defense investigator, but may not retain a copy or otherwise disseminate the contents.

7 5. The protected discovery and information therein may only be used in connection with the
8 litigation of this case and for no other purpose.

9 6. If there is a substitution of counsel prior to final disposition of the case, new counsel of
10 record must join this Protective Order before any protected discovery may be transferred from the
11 undersigned defense counsel to the new defense counsel. New defense counsel then will become defense
12 counsel for purposes of this Order, and become the custodian of the protected discovery, and shall then
13 become responsible, upon conclusion of appellate and post-conviction proceedings, for complying with
14 the provisions set forth in Paragraph 12 below. All members of the defense counsel, whether current or
15 past counsel, are at all times subject to the Order and are not relieved by termination of representation or
16 conclusion of the prosecution.

17 7. Defense counsel will store the protected discovery in a secure place, such as a locked
18 office, and shall use reasonable care to ensure that it is not disclosed to third persons in violation of this
19 agreement. To the extent any of the protected discovery, or any copies or reproductions thereof, are
20 stored electronically the protected discovery shall be stored on a password-protected or encrypted
21 storage medium or device. Encryption keys shall be stored securely and not written on the storage media
22 they unlock.

23 8. If defense counsel makes, or causes to be made, any further copies of any of the protected
24 discovery, defense counsel will ensure that the following notation is physically written or inscribed on
25 each copy made, if the confidentiality of the documents is otherwise not already present on the copied
26 file(s) or hard copies: "CONFIDENTIAL – May Not Be Disseminated Except in Accordance With
27 Court Protective Order."

28 9. If defense counsel releases custody of any of the protected discovery, or authorized

1 copies thereof, to any person described in paragraph three, defense counsel shall first provide such
2 recipients with copies of this Order. The parties agree that defense counsel, defense investigators and
3 support staff shall not provide the protected discovery to the defendant or any other witness or copies of
4 the protected discovery, except for the limited situations identified in this Order.

5 10. Defense counsel shall advise the government counsel of any subpoenas, document
6 requests or claims for access to the protected discovery by third parties if defense counsel is considering
7 disseminating any of the protected discovery to a third party in order that the government may take
8 action to resist or comply with such demands as it may deem appropriate.

9 11. Defense counsel shall be responsible for advising the defendant, or his/her client, his/her
10 employees and other members of the defense team, and defense witnesses of the contents of this Order.
11 Defense counsel shall not provide or make available to any person described in paragraph three the
12 protected discovery until that individual has been provided a copy of this Order by defense counsel.

13 12. If it becomes necessary to refer to an identified victim or minor witness during any public
14 court proceeding or in a public court filing, the parties shall use the first and last initials of the identified
15 victim or witness.

16 13. Upon the final disposition of the case, including exhaustion of direct and collateral
17 appellate proceedings, defense counsel shall return the protected discovery to the government, or certify
18 in writing that the protected discovery has been destroyed, or, if defense counsel seeks to maintain the
19 protected discovery in the defense counsel's files beyond final disposition of the case, seek modification
20 of this provision from the Court. If any protected discovery is used as defense exhibits, they shall be
21 returned to the government along with the other protected discovery upon the final disposition of the
22 case, and stored with the government exhibits so long as those are required to be maintained.

23 14. Nothing in this Order shall preclude a party from seeking a more restrictive protective
24 order or other court order with regard to particular discovery items.

25 15. Defense counsel reserves the right to file objections with the Court concerning the
26 protected status of any material produced by the government, and to seek a less restrictive protective
27 //
28 //

1 order, including an order requiring redactions in lieu of more restrictive measures, to ensure the
2 defendant has the proper level of access to such material in preparing his defense. The contested
3 protected materials shall be submitted in camera or under seal to the Court for evaluation, not publicly
4 filed.

5
6 Dated: October 12, 2022

PHILLIP A. TALBERT
United States Attorney

7
8 /s/ CHRISTINA McCALL
9 CHRISTINA McCALL
10 Assistant United States Attorney

11 Dated: October 12, 2022

12 /s/ ETAN ZAITSU
13 ETAN ZAITSU
14 Counsel for Defendant
15 TERRY FRANCIS LE CLAIR

16 **[PROPOSED] ORDER**

17 By agreement of the parties, and good cause appearing, the Court hereby adopts the stipulation
18 and the terms contained therein. IT IS SO ORDERED.

19
20 
21 THE HONORABLE JEREMY D. PETERSON
22 UNITED STATES MAGISTRATE JUDGE